

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

DURWOOD BELLMONT OSTERHOUT,

CV 19-00024-H-JTJ

Plaintiff,

ORDER

vs.

CAPTAIN SETH M. WENZEL and  
OFFICER COSTALICKEY,

Defendants.

Pending are Defendants' Motion for Summary Judgment (Doc. 33), Defendants' Motion to Deem Requests for Admission Admitted (Doc. 36), and Defendants' Motion to Deem Motions Well Taken (Doc. 39).

Defendants failed to serve Mr. Osterhout with the notice required by *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) (en banc) and Local Rule 56.2. The Ninth Circuit has stressed the importance of pro se prisoners receiving a *Rand* Notice at the same time as the motion for summary judgment and failure to provide contemporaneous notice maybe grounds for reversal. *Woods v. Carey*, 684 F.3d 934, 939-41 (9th Cir. 2012). Local Rule 56.2(b) provides that the failure to provide this notice will result in the denial of the motion, regardless of whether the

motion is fully briefed.

ACCORDINGLY, IT IS HEREBY ORDERED THAT Defendants' Motion for Summary Judgment (Doc. 33) is DENIED WITHOUT PREJUDICE and SUBJECT TO RENEWAL. The Court extends the dispositive motion deadline to May 1, 2020.

IT IS FURTHER ORDERED THAT Defendants' Motion to Deem Motions Well Taken (Doc. 39) is DENIED. The Court will reserve ruling on Defendants' Motion to Deem Requests for Admissions Admitted (Doc. 36).

DATED this 20th day of April, 2020.

/s/ John Johnston  
John Johnston  
United States Magistrate Judge